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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 699

PEOPLES PACKING COMPANY, INC., A CORPORATION,
Petitioner,

vs.

L. METCALFE WALLING, ADMINISTRATOR OF THE WAGE
AND HOUR DIVISION, UNITED STATES DEPARTMENT OF
LABOR.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE TENTH CIRCUIT AND BRIEF IN SUP-
PORT THEREOF.

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Petition for Writ of Certiorari.

To the Honorable Supreme Court of the United States:

Your petitioner respectfully shows:

I.

Summary Statement of Matter Involved.

This case was begun in the United States District Court for the Western District of Oklahoma for an injunction by the Administrator seeking to bring the petitioner under the

provisions of the Fair Labor and Standards Act of Congress (U. S. C., Title 29, Sec. 201 et seq.).

The complaint alleges that the defendant (below) is "engaged in the production, sale and distribution of live stock products and live stock by-products".

That "the goods produced by said employees in said place of business have been and are being produced for inter-state commerce, and have been and are being sold, transported and shipped and offered for sale to, unto and through states other than the State of Oklahoma".

The District Court found that the petitioner was not "engaged in inter-state commerce or the production of goods for interstate commerce or the sale of goods for inter-state commerce", and "was engaged in production and sale of goods entirely within the boundaries of the State of Oklahoma" (R. 67).

The trial court further found that the petitioner's plant was a "service establishment" within the meaning of Sec. 13 (a) 2 of the Act, and that the employees of the petitioner were exempt from the Act.

These findings of fact and conclusions of law of the trial court are as follows (R. 64-66):

"FINDINGS OF FACT

The court, having heard the evidence and the cause having been submitted, finds from the evidence the following facts:

The defendant is engaged in the slaughter and sale of livestock in Oklahoma City, Oklahoma, and has been for many years last past. It purchases its animals for slaughter and sale all within the state of Oklahoma. The slaughtering of the animals is conducted at its plant in Oklahoma City. The edible portion of the animals is prepared for market and sold entirely within the state of Oklahoma and consists of in excess of 95 per cent of the value of the carcasses. The inedible

portion consists of the hides and the offal and represents from 3 to 4 per cent of the value of the carcasses and approximately 45 per cent of the weight of the carcasses. The hides are sold to a purchaser in Oklahoma City who, when he has accumulated and conditioned a carload, ships to points outside the state. The offal is purchased by a corporation in Oklahoma City which reduces it to grease, tankage and waste and sells the grease to soap manufacturers outside the state.

The defendant employs from thirty to forty persons. From four to seven handle the killing, removal of the hides and the offal in connection with their other work in the plant. The hides and offal are sold immediately from the plant.

The court further finds that it would be impossible for the defendant to slaughter its cattle and hogs and prepare the edible portion thereof for market without removing the hides and offal. In the early history of the industry the offal had little or no value and usually was hauled to a garbage dump and destroyed, and the hides had only nominal value. The court further finds from the evidence that the value of the hides and offal, being that portion of the carcass which is edible, represents from 3 to 4 per cent of the total value of the carcass. Therefore, the removal of the hides and offal from the edible portion of the animal is as much, or more, an act in connection with the preparation of the edible portion for market as it is an act in the salvaging of the inedible portion.

The court further finds that the employees of the defendant do not manufacture the hides and offal. They merely remove the inedible portion from the edible portion. They could not be producers of the inedible portion of the animals except as servicing and handling the hides and the offal make the employees producers. The hides and offal, when sold, are in exactly the same condition they were before removal from the animals except that they have been separated from the edible portion. The inedible portion is sold at the dock of the plant of the defendant and the defend-

ant has nothing more to do with the inedible portion after it leaves its dock.

The court further finds that in removing the inedible portion of the carcass from the edible, or the edible from the inedible, the defendant was performing a service as hereinabove stated.

The court further finds from the evidence that at no time in the conduct of the business of the Peoples Packing Company, Inc., has the Government Inspector ever inspected the meats or products of the defendant for sale, or attempted to do so, in any way.

The plaintiff is allowed an exception.

Dated this 11th day of February, 1942.

EDGAR S. VAUGHT,
United States District Judge.

CONCLUSIONS OF LAW.

The court concludes, as a matter of law, in the above entitled case, in connection with the findings of fact filed herewith, as follows:

I.

That the defendant, Peoples Packing Company, Inc., is not engaged in interstate commerce and is not engaged in the production of goods for interstate commerce within the meaning of the Wage and Hour Law of the United States, and has not been so engaged at any time prior to the trial of this action.

II.

That the establishment operated by the defendant was a "service establishment" within the meaning of Section 213, Title 29 U. S. C. A. (Section 13 (a) (2) of the Fair Labor Standards Act of 1938) and the employees of the defendant therein exempt from the provisions of Sections 206 and 207, Title 29, U. S. C. A. (Sections 6 and 7 of the Fair Labor Standards Act of 1938).

III.

That the defendant, Peoples Packing Company, Inc., is not, and never has been, engaged in interstate com-

merce or the production of goods for interstate commerce or the sale of goods in interstate commerce, but is, and has been, engaged in the production and sale of goods entirely within the boundaries of the state of Oklahoma.

IV.

That the plaintiff is not entitled to an injunction against the defendant or any relief, under the pleadings and the evidence, and that the injunction should be denied at the cost of the plaintiff.

The court finds the issues, generally, in favor of the defendant. The plaintiff is allowed an exception.

Dated this 11th day of February, 1942.

EDGAR S. VAUGHT,
United States District Judge."

(The opinion of the District Court is reported, as Fleming vs. Peoples Packing Co., 42 Fed. Supp. 868.)

The findings of fact of the trial court were not challenged in the Circuit Court of Appeals.

The trial court concluded as a matter of fact and as a matter of law that the petitioner was not "engaged in the production of goods for commerce" while the Circuit Court said "we conclude that the employees in question were engaged in the production of goods for commerce and in handling and working on such goods". And this notwithstanding the undisputed fact that all hides and offal were sold and delivered to purchasers in their raw condition all within the State of Oklahoma, and the petitioner has no control over the same after sale and delivery.

So the controversy is, did the petitioner "produce goods" for interstate commerce?

The question of direct and indirect effect on commerce is here involved. The Federal Courts uniformly hold that, if the activities only affect inter-state commerce indirectly that the act does not cover such activities. That is this case.

The edible goods were all sold in Oklahoma. The inedible were all sold and delivered in Oklahoma. The purchasers did with them what they pleased.

By reason of the holding of the Circuit Court of Appeals the petitioner is brought under the Act when under the undisputed facts in the record it claims that it is not subject thereto. The petitioner further claims that under the facts as a matter of law it is not within the letter or spirit of the Act itself.

The trial court denied the injunction. The Circuit Court of Appeals held "the judgment is reversed and the cause remanded with instructions to grant the injunction".

II.

Jurisdiction.

1. The date of judgment of the Circuit Court of Appeals to be reviewed is December 16, 1942 (Tr. 87). The opinion of the Court was handed down on the same day (Tr. 81).

2. The statutory provision under which the jurisdiction of this Court is invoked and which is believed to sustain its jurisdiction is Section 347 (a) of Title 28 of the United States Code, being Section 240 of the Judicial Code, as amended.

3. The decision of the court below is in conflict with the decisions of various Circuit Courts of Appeals and of this Court, and decides an important question of federal law which has not been, but should be settled by this Court, and decides an important question of general law in a way in conflict with all authority. This Court entertains jurisdiction to grant writs of certiorari in similar cases at every term, and there can be no need to list any of the array of cases in which its jurisdiction is so exercised except two cases arising under the Act in question: *Kirschbaum v. Walling*, 316 U. S. 517, and *Warren-Bradshaw Drilling Co.*

v. Hall (decided Nov. 9, 1942, 87 L. ed. 99), *Higgins v. Carr Brothers Co.*, No. 97, October Term, 1942 (decided January 18, 1943), *Walling v. Jacksonville Paper Co.*, No. 336, October Term, 1942 (decided January 18, 1943).

4. The petition for the writ is presented under Rule 38, paragraph 5 (b), of the Revised Rules of this Court adopted February 13, 1939, and effective February 27, 1939.

III.

Questions Presented.

The questions presented on this petition may be stated as follows:

1. Where the petitioner operates a packing plant in Oklahoma and where all of the products and goods produced are sold and delivered within the State of Oklahoma, and none are produced for sale or sold outside of the state, do the employees of such plant, or any of them, come under the provision of the Fair Labor Standards Act of Congress (U. S. C. Title 29, Sec. 201 et seq.) merely because some of the hides and offal are converted into by-products by third persons who purchase and treat the same, as they see fit, after title to the same passes to them and the petitioner completely loses control thereof.

2. Do the employees of the petitioner fall under the exemption section of the Act because the removal of the hides and offal constitutes a servicing within the meaning of the exemption section of the Act?

IV.

Reasons Relied Upon for Allowance of the Writ.

The petitioner relies on the following reasons for the allowance of the writ of certiorari:

1. The Circuit Court of Appeals in holding as a matter of law, on the undisputed facts, as found by the trial court,

that the petitioner and certain of its employees are under the provisions of the Act of Congress in question and produced goods for commerce, is in conflict with the following decisions, which hold that indirect effect only on interstate commerce will not bring the employees of petitioner under the act.

Schechter v. United States, 295 U. S. 495, 79 L. Ed. 1570, where it is said “* * * the distinction between direct and indirect effects of intrastate transactions upon interstate commerce must be recognized as a fundamental one, essential to the maintenance of our constitutional system. Otherwise, as we have said, there would be virtually no limit to the Federal power, and for all practical purposes we should have a completely centralized government”. Chief Justice Hughes, speaking for the court, said:

“The question of chief importance relates to the provisions of the Code as to the hours and wages of those employed in defendants’ slaughterhouse markets. It is plain that these requirements are imposed in order to govern the details of defendants’ management of their local business. The persons employed in slaughtering and selling in local trade are not employed in interstate commerce. Their hours and wages have no direct relation to interstate commerce. The question of how many hours these employes should work and what they should be paid differs in no essential respect from similar questions in other local businesses which handle commodities brought into a State and there dealt in as a part of its internal commerce.”

Myers et al. v. Bethlehem Ship Building Corporation (First Circuit), 88 F. (2d) 154.

Industrial Association v. United States, 268 U. S. 64, 82, 69 O. (ed.) 839, 855, 45 S. Ct. 403.

Petitioner claims that the opinion in the instant case is in conflict with the opinion of the 10th Circuit in *Jewell Tea*

Company v. Williams, 118 F. (2d) 202, where it is held by this Circuit that "the mere fact that an anticipated local transaction causes a movement in interstate commerce is not sufficient to constitute the local transaction a part of interstate commerce".

Also conflicts with *Lipson v. Socony Vacuum Corporation*, 87 F. (2d) 265, First Circuit. (Writ granted dismissed by stipulation (81 L. Ed. 862 and 1364).)

Also conflicts with *Moore v. New York Cotton Exchange*, 270 U. S. 593, 70 L. Ed. 750, and *Ware & Leland Co. v. Mobile County*, 209 U. S. 405, 52 L. Ed. 855.

Petitioner submits that the opinion in the present case is in conflict with the principles set out in the learned opinion of Mr. Justice Frankfurter construing the very act of Congress in *Kirschbaum v. Walling*, 316 U. S. 517, holding that each case must be determined on the exact facts to determine whether or not the act was intended to or does cover the activities of the party.

2. The Circuit Court, in holding that the petitioner was under the Act under the undisputed facts, went further than the terms of the Act will permit.

WHEREFORE, your petitioner prays that a writ of certiorari be issued under the seal of this Court directed to the United States Circuit Court of Appeals for the Tenth Circuit at Denver, Colorado, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of said Court had in cause No. 2571 in said Court, entitled *L. Metcalfe Walling vs. Peoples Packing Co.*, to the end that said cause may be reviewed and determined by this Court as provided by the statutes of the United States, and that the judgment of said United States Circuit Court of Appeals in said case be re-

versed by this Court, and that petitioner have such further relief as to this Court may seem proper.

Dated at Oklahoma City, Oklahoma, this — day of January, 1943.

PEOPLES PACKING COMPANY, INC.,
Petitioner.

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